

*Notes for Speech to
Law Society of Upper Canada
by Bob Rae
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I want to start by thanking the Benchers of the Law Society for conferring this honour. There was a time in my life when I was receiving different messages, from the Law Society and others. So to be awarded a doctorate of laws is an even greater honour when I consider how fate can change.

Let me also congratulate all of you – in every sense it is your day, and I share in your great sense of pride and achievement. I will confine my personal advice to a minimum. Let me start with the refrain from a song heard more than occasionally gently raging through the Rae household. It is the song Tubthumping by Mr. Justice Chumba Wumba, and it achieves its effect by repetition:

“I get knocked down
But I get up again
They ain’t never gonna keep me down”

I have found that whatever other qualities any of us have, they pale by comparison with the simple value of persistence. You will lose cases, and arguments. You will suffer setbacks and defeat – some very public and some private. There is no

disgrace in that. What matters is how you handle it, and your determination to learn from your mistakes, and others. But you have to get up again.

With that in mind, it is a particular pleasure for me to be sharing this day with my teacher, colleague, opponent and friend, Ian Scott.

You enter the practice of law at a time of unprecedented change in Canada and around the world. Globalization brings with it both good and bad. The end of the cold war, the collapse of communism in Eastern Europe, the end of apartheid: these all seemed unimaginable when I was entering the profession nearly twenty years ago. There is a renewed focus in every part of the world in how a stronger rule of law, a sense of the strength of civil society, can point the way to a better quality of life.

Civil societies are based on a respect for the rights of the individual, as well as for the broader interest of the community. They recognize that open markets, effectively scrutinized, have proven to be a very efficient way to provide for economic growth. Yet the market cannot, and should not, do everything. Civil societies therefore value the role of government and the voluntary sector and understand that the size of the public sector will naturally depend on shifting public needs and demands.

Civil societies are plural societies in a sense that there are many centres of power and authority, not just one. Corporations, both for profit and non-profit, have an independent role and are respected as such. Institutions of higher learning are free of political interference, and education and the growth of knowledge are seen as goods in themselves. Voluntary associations of all kinds are encouraged, as are trade unions and other organizations whose purpose is the improvement of the condition of the people.

Civil societies are based on the premise that an independent judiciary and a legal system with a transparent ability to maintain order and protect rights are essential. Civil societies must include a free press without political repression or censorship. Civil societies, as their name implies, are based on a respect for public order, as well as a civility of discourse. In this sense, civil societies are based on a high level of social trust and mutual confidence.

The positive side of globalization is the potential to achieve more economic growth and technological change and open civil societies in every part of the world. As lawyers, you will have the opportunity in Canada and around the world to advance the cause of good governance as well as the interests of your clients. It is an exciting opportunity.

But we also have to be aware that the last twenty years in Canada and other countries have seen an increase in unemployment, a deepening of inequality, and a tearing of the fabric of social and economic decency we have assumed lie at the basis of our country.

Naturally these changes will affect your lives as lawyers. You can choose how your own career will be linked to what is happening. I hope that whatever you do, whether it's in a downtown firm, advising on emerging democratic institutions in another country, or developing your skills in negotiation, advocacy, and mediation, you will remember that people come to a lawyer to help solve problems, and that they rely on your judgement and your integrity.

In an open society like Canada's, you will be free to serve whatever interests you want. Your skills as a lawyer are an opportunity for private success and enjoyment as well as public service. You will find that self-interest is not enough. Social justice needs your time as well, even it is not billable.

Canada too faces both opportunities and challenges. Thomas Darcy McGee, the great advocate of Confederation who was gunned down by an assassin's bullet in 1868, once said that "federalism is a great principle that speaks to the very foundations of human nature" One of Canada's great orators, McGee

might simply be accused of rhetorical exaggeration. But that would miss the point that he was on to something.

McGee understood that Canada's diversity required a different kind of governance a different public philosophy from its colonial past. No statement enraged his fellow Canadians more than Lucien Bouchard's comment that "Canada is not a real country." Bouchard was mouthing the platitude that the only real countries are those where everyone speaks the same language and where nationalism is the official religion of the majority. This is not even an accurate reflection of what has happened inside Quebec itself. Quebec is not a homogeneous community. There is nothing "pure wool" about it.

McGee understood that a pure and simple ethnic or religious or linguistic nationalism could not bring a lasting solution to the problems of the Ireland of his birth, a view which led to his own assassination at the hands of Fenian nationalists. Tens of thousands of deaths later, Irish negotiations continue in the earliest moments of efforts to waken from a nightmare of remembered grievance. McGee was right about Ireland. He also was right about Canada. Federalism is not a philosophy of convenience. It is based on the premise that it is part of human nature for each of us to have a range of loyalties, and that to be loyal first of all to one's own hearth, to one's own home, to one's own faith, to one's

own language, to one's own distinctiveness, is entirely natural. Yet this loyalty cannot be exclusive if we are to live side by side with others.

Speaking almost a hundred years before, another great Irishman, Edmund Burke, said "When I compare the rights of human conquest with the rights of human nature, the latter are so great that I can give the former no consideration at all." Burke's truth lies at the heart of all great statecraft. Canada's emergence as a country was marked in fact by two historic encounters, the first between European settlers and aboriginal people (whose arrival in North America predated the Vikings, John Cabot, Jacques Cartier and Samuel de Champlain by several thousand years), and the second between English and French speaking immigrants who gradually became a majority in the new land.

Both encounters have been treated by some as a conquest, for whom the only logical conclusion is the triumph of the majority and the forced conversion and assimilation of "the losers". This view has by no means disappeared. During our most difficult confrontations from 1837 and its aftermath to Oka and the post referendum malaise, "conquest style thinking" has lurked underneath the surface of many people's thoughts.

In our wiser moments we have listened to voices like Burke and McGee. Treaties have been signed with rights to both sides. Clear limits have

been placed on what any temporary majority could do. From the very origins of these first encounters we have had to learn that rights can belong to groups as they can to individuals, and that pure and simple majority rule cannot be the only single principle of a civilized political community.

Those who are advocating the break-up of the country would have you believe that Canada is scarcely a federation at all and that the federal principle means relatively little. They would argue that there is a doctrine called sovereignty which is absolute and which has no limits or boundaries. Yet the history of our own country and its constitution, as well as what Burke would call the rights of human nature, point to a very different reality, that federalism means quite simply that some governments are sovereign in some area, others are sovereign in other areas, and these sovereignties are not absolute; they are limited, limited by law, limited by circumstance, limited by, to use Burke's phrase again, the rights of human nature itself.

There are a range of sovereignties. We are discovering now how important it is to deal with questions of aboriginal self-government. Various sovereignties compete for our loyalty. When we talk, for example, about rights of self-determination, they are subject to circumstance and to the rule of law. Here again, Canada's discovery of the federal principle, something in a sense we have

had to work our way towards had been borne of the simple fact that none of us are completely sovereign. We do not live in a world in which we can say we have the free and absolute powers to do whatever we want as individuals or as groups.

It is now important for two things to happen. The first is that we must be clearer and more emphatic across the country on the benefits and the meaning of the federalism which we have been building not just for 125 years, but, I would argue, since 1774 which was in a sense the true beginning of a federal principle in Canada. There is a lot of misunderstanding and misinterpretation with respect to the meaning and the essence of federalism in the province of Quebec and in other parts of the country. Those who argue that Canada is made up of ten provinces which must be treated the same in a kind of cookie-cutter approach of total equality are arguing this in defiance of Canadian history. Federalism takes different forms in different countries at different times. There is not one magic definition of federalism. There is not one way in which one can be a federalist. There is not one, and only one, federalist constitution. There are a range of constitutional possibilities. Above all, in making constitutions, we should have respect and knowledge of the institutions, the culture, the language and the history of our own country.

To those outside Quebec, to those voices which have rejected the notion of distinct society, to those voices which have shown an unwillingness to recognize Quebec's distinctiveness, I would say that they are ignoring an important part of Canadian history and of Canadian reality. For generations, people outside of Quebec kept on asking the typical media question "What does Quebec want?" I think Quebec is now entitled to say, "Well, we have a pretty good idea of what we want. We told you what that was in Meech Lake. We've given you some sense of the direction we want to go in." There's clearly a strong majority of opinion in Quebec not in favour of separation, but certainly in favour of recognizing the distinctiveness of Quebec and the particular quality of Quebec institutions. Now it seems to me they are entitled to say to English Canada, "What do you want?"

In the rhetoric of independence within Quebec there is a constant quest for partnership and for association. This is ironic, because Canadian history has shown that it was the drive for partnership and association that produced federalism. As a practical matter, if the objective of the independence exercise is the renegotiation of the partnership, seeking to rework what should be federal and what should be provincial, which sovereignties should apply and in which ways, this will lead to negotiations in which inevitably there will be concessions and compromises. No one ever goes into a negotiation expecting to get everything one

asks for at the beginning. Why put the country to the brink if the real objective is partnership? Quebec has a partnership . It's called Canada.

That is why the second part of the Canadian strategy is as important as the first. We cannot go into another referendum without a sound framework of law, which is what the recent reference to the Supreme Court is all about. Despite the demagoguery of Mr. Bouchard, this reference is not about challenging democracy in Quebec. It is about law, civility, and governance. Referenda lend themselves to bumper sticker answers. Canada is not a bumper sticker. It is governed by laws, customs, practices and conventions more than the temporary enthusiasms of opinion.

Equally important, Canadians – all Canadians – need to hear clearly the costs and consequences of Quebec voting for independence. We are entitled to ask our governments, both provincial and federal, what it will mean for boundaries and borders, for citizenship, for governance, for transfers and taxes, for the future of Canada. Voices like Peter Lougheed, John Crosbie, and Roy Romanow have made constructive contribution to this debate . We need to hear more from our governments. No one should be allowed to assume that the result will be the “status quo plus”. It will be the “status quo minus” for all of us.

Writing over a century ago the French sociologist Ernest Renan posed the question "What is a Nation"? He pointed out that religion, race, ethnicity and language could not be seen as the defining core of a country. They were each too restrictive and confining, too exclusive of the competing realities within any political community. He came to the simple conclusion that a nation was a group of people who had chosen to do great things together in the past and who choose to do them together in the future. It is an act of conscious political will that must be reaffirmed in each generation.

No doubt this notion of civic nationalism is less satisfying to some than the gut appeal to race, colour, and language. But it has the advantage of assuring mutual toleration, civic peace, and a political identity that transcends race and religion. Our best political leaders have always understood this. Our worst ones have chosen to ignore it, and have consistently led us to dead ends.

A more regionalized and decentralized Canada is a growing reality, but so is the need for coordination. Open markets will require a limit on governments' penchant for erecting barriers to freer movement. This coordination will, in turn, imply the reform of federal institutions, and of federal provincial practices. But we need an effective national government to ensure the endurance of solidarity and equal opportunity across Canada.

The Senate may be abolished. The relationship with monarchy may be reassessed. Parliament itself can usefully change, with proportional representation. But for all these changes, an underlying truth remains: the idea of Canada, a nation and civil society with a history of partnership and solidarity, remains as strong and vibrant as we care to make it.